S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

ROSE MARIE MOORE,

Plaintiff-Appellant,

v

MICHAEL HARRY and KAREN HARRY,

Defendants-Appellees.

UNPUBLISHED
March 31, 2000

No. 209285
Wayne Circuit Court
LC No. 95-507292 NI

Before: Wilder, P.J., and Sawyer and Markey, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff fell on defendants' driveway and sustained injuries. She filed suit alleging that the driveway was cracked and in disrepair, and that defendants were negligent in failing to maintain their property in a reasonably safe condition.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff could not establish a causal link between her injuries and any breach of duty, because in her deposition she acknowledged that she did not know the cause of her fall. The trial court granted defendants' motion, and subsequently denied plaintiff's motion for reconsideration.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Berryman v K Mart Corp*, 193 Mich App 88, 91-92; 483 NW2d 642 (1992). A prima facie case of negligence may be based on legitimate inferences, provided that sufficient evidence is produced to take the inferences "out of the realm of conjecture." *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983).

Plaintiff argues that the trial court erred by granting defendants' motion for summary disposition. We disagree and affirm. Plaintiff did not know the cause of her fall, and could not testify that she fell due to a defect in the driveway. To establish causation, a claimant must prove that it is more likely than not that but for the defendant's breach of duty, the injuries would not have occurred. *Skinner v Square D Co*, 445 Mich 153, 165-166; 516 NW2d 475 (1994). Here, the possibility that a breach of duty by defendants might have caused plaintiff to fall and sustain injuries is not sufficient to establish the required causation. A jury would be required to engage in speculation and conjecture in order to infer that a breach of duty by defendants caused plaintiff's injuries. To base a case of negligence on inferences under such circumstances is prohibited. *Ritter*, *supra*. The trial court properly decided the issue as one of law and granted summary disposition. *Reeves v K Mart Corp*, 229 Mich App 466, 480; 582 NW2d 841 (1998).

Affirmed.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Jane E. Markey